

REMARKS

This responds to the Office Action dated February 9, 2006, and the references cited therewith.

Claim Objections

Claims 11, 13, 26, and 29 were objected to because of the following informalities:

- a) In claim 11, line 1, "claim 1" should have been changed to -claim 4-;
- b) In claim 13, line 1, "claim 1" should have been changed to -claim 12-;
- c) In claim 26, line 10, "congestion bit error" should have been deleted;
- d) In claim 29, line 1, "claim 27" should have been changed to -claim 28-.

Claims 11, 13, 26 and 29 have all been amended solely to address the informalities cited in the Office Action.

§103 Rejection of the Claims

Claims 1-3, 12-14, 19-21 and 26-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chapman et al. (U.S. Patent No. 6,922,390) in view of Lee et al. (U.S. Patent No. 6,587,437). This rejection is respectfully traversed, at least because Chapman et al., does not describe an "impending congestion" indication, but only a congested or not congested indication. A proper *prima facie* case of obviousness has not been established, and the rejection should be withdrawn.

The Office Action indicates that Chapman et al., describes "an impending congestion indication (congestion stamp in congestion notification field)." This is respectfully traversed. At Column 5, lines 21-32, a control packet is released to the network with the congestion notification field. The field is described as being set to either "not congested" or "congested." There is no teaching or suggestion of an impending congestion indication. Since Chapman et al., does not describe the impending congestion indication as claimed, the rejection should be withdrawn. The remaining references are not cited as providing such an impending congestion indication, nor has a review by applicant revealed such a teaching or suggestion in the references

alone or combined. Thus at least one element of the claims is lacking. As such, a proper *prima facie* case of obviousness has not been established, and the rejection should be withdrawn.

The Office action refers to Col. 3, lines 25-36, Col. 4, line 61 to Col. 5, line 2 and Col. 6, lines 12-39 as describing the ability of a node to foresee congestion, and appears to equate that ability to an impending congestion notification in a header of a packet. This equating is respectfully traversed. Col. 3, lines 25-36 appear to identify the different types of packets. There is no teaching of any such anticipation of impending congestion indications. Col. 4, line 61 to Col. 5, line 2 merely mentions a congestion notification. As described above, such a notification is limited to either "congestion" or "no congestion". There is no discussion of an "impending congestion indication" as claimed. Col. 6, lines 12-39 appear to describe the well known algorithms of adjusting windows based on received packets with congestion indications. None of the citations to Chapman et al., teach or suggest, either alone or in combination with other references, the use of an impending congestion indication as claimed.

Claims 8 and 33 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chapman et al. (U.S. Patent No. 6,922,390) in view of Lee et al. (U.S. Patent No. 6,587,437) and in further view of LaGalbo et al. (U.S. Patent No. 6,947,446). This rejection is respectfully traversed. None of the references, alone or combined describe the use of an impending congestion indication as indicated above. The rejection should be withdrawn.

Claims 9, 10 and 34-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chapman et al. (U.S. Patent No. 6,922,390) in view of Lee et al. (U.S. Patent No. 6,587,437) and in further view of Takagi (U.S. Patent No. 6,937,600). This rejection is respectfully traversed. None of the references, alone or combined describe the use of an impending congestion indication as indicated above. The rejection should be withdrawn.

Applicant reserves the right to point out further distinctions between the claims and the cited art. It is thought that the above distinctions should be sufficient to overcome the current rejections of the claims.

Allowable Subject Matter

Claims 4-7, 15-18, 22-25 and 30-32 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6972 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

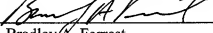
Respectfully submitted,

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By their Representatives,

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Date 5-9-2006

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 9 day of May, 2006.

Name

John P. Fushie, Jr.

Signature

